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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/747,583	12/21/2000	Daniel Leibholz	SUN06-34(P4804)	3889
<div>58408 7590 01/09/2007</div> <div>BARRY W. CHAPIN, ESQ. CHAPIN INTELLECTUAL PROPERTY LAW, LLC WESTBOROUGH OFFICE PARK 1700 WEST PARK DRIVE WESTBOROUGH, MA 01581</div>				
			<div>EXAMINER</div> <div>HUISMAN, DAVID J</div>	
			<div>ART UNIT</div> <div>2183</div>	<div>PAPER NUMBER</div>
			<div>MAIL DATE</div> <div>01/09/2007</div>	<div>DELIVERY MODE</div> <div>PAPER</div>

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/747,583

Applicant(s)

LEIBHOLZ ET AL.

Examiner

David J. Huisman

Art Unit

2183

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 December 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-13 and 16-19, as set forth in the final rejection.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

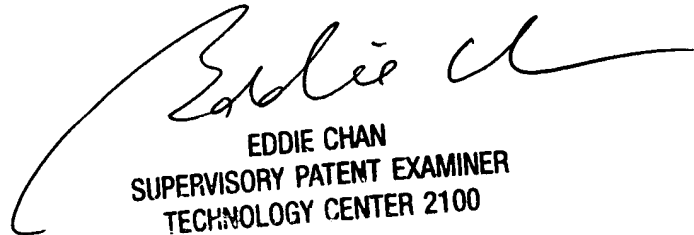
11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
see attached sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Applicant argues, on page 7 of the remarks, in substance that:

"speculative spills and fills [in Lin] occur in response to available bandwidth and not in response to an imminent underflow/overflow condition," and

"The invention of Lin assumes that a register window overflow condition and register window underflow condition will potentially occur at some time in the future, thus it does not detect that a register window overflow condition or a register window underflow condition is imminent by determining if execution of any fetched instructions will result in one of a register window overflow or register window underflow."

While fully considered by the examiner, this argument has been found non-persuasive because the purpose of Lin is to speculatively perform spills and fills so that mandatory spills and fills can be avoided. Spills and fills are performed as procedures are called and returned to. When a new procedure is called by a first procedure, the data in the current register window associated with the first procedure should be spilled to make room for data stored by the new procedure. When the new procedure finishes and control is returned to the first procedure, the current register window should be spilled of data now associated with the new procedure and filled with previously spilled data associated with the old procedure. Lin inherently anticipates that switching of procedures will be performed, and therefore, Lin will perform spills and fills ahead of time so that when the switching is performed, time is not wasted performing spills and fills at that time. The fact that Lin looks for available bandwidth is irrelevant. This is merely done so that speculative spills and fills are not performed at the expense of the currently executing procedure. The algorithm of Lin is to perform spills and fills whenever possible because a different procedure is going to be executing. Lin's system is built to assume that a procedure switch is imminent (i.e., going to happen very soon), and consequently, speculative spills and fills are performed immediately, as long as bandwidth is available.



EDDIE CHAN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100